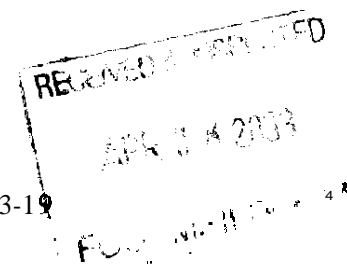


Before the
Federal Communications Commission
Washington, D.C. 20554

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In re Applications of)
)
Northcoast Communications, LLC and)
Cellco Partnership d/b/a Verizon Wireless)
)
For Consent to Assignment of Licenses)
)
File Nos. 0001 138904, 0001 138905, and)
0001138909)

WT Docket No. 03-19



MEMORANDUM OPINION AND ORDER

Adopted: April 7, 2003

Released: April 8, 2003

By the Chief, Commercial Wireless Division:

I. INTRODUCTION

1. We have before us three applications filed by Northcoast Communications, LLC and its wholly-owned subsidiaries, Boston Holding, LLC and New York PCS Holding, LLC (collectively, "Northcoast"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") for assignment of fifty 10 MHz Personal Communications Services ("PCS") licenses from Northcoast to Verizon Wireless.¹ Because no issues of decisional significance have been raised and because we conclude that the proposed assignment would serve the public interest, we grant the applications. We deny the petition to deny ("Petition") filed by National Engineering Technical Company ("NETCO").²

II. BACKGROUND

2. On December 31, 2002, pursuant to section 310(d) of the Communications Act of 1934, as amended ("the Communications Act"),³ Northcoast and Verizon Wireless filed three Applications seeking Commission consent for Northcoast to assign fifty 10 MHz PCS licenses to Verizon Wireless. Verizon Wireless is a general partnership that is ultimately owned by Verizon Communications, Inc. and Vodafone Group Plc ("Vodafone"). Northcoast is a Delaware limited liability company ("LLC") consisting of two members, Northcoast PCS, L.L.C. ("Northcoast PCS") and Cablevision PCS

¹ Application of New York PCS Holding, LLC and Cellco Partnership d/b/a Verizon Wireless for Assignment of Authorization, filed Dec. 31, 2002, ULS File No. 0001 138904; Application of Boston Holding, LLC and Cellco Partnership d/b/a Verizon Wireless for Assignment of Authorization, filed Dec. 31, 2002, ULS File No. 0001 138905; Application of Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless for Assignment of Authorization, filed Dec. 31, 2002, ULS File No. 0001 138909 ("Lead Application").

² See Application of Consent for Assignment of Fifty Broadband Personal Communication Services Licenses Filed by Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, Petition to Deny of National Engineering Technical Company (filed Feb. 20, 2003) ("Petition").

³ 47 U.S.C. § 310(d).

Investment, Inc. ("Cablevision PCS"). Northcoast PCS is the manager of the LLC and holds a 50.1-percent equity interest and a 75-percent voting interest in Northcoast. Cablevision PCS, a wholly-owned subsidiary of Cablevision Systems Corporation, is a non-controlling member of the LLC and holds a 49.9-percent equity interest and a 25-percent voting interest in Northcoast.

3. On January 21, 2003, the Wireless Telecommunications Bureau issued a Public Notice to establish a pleading cycle to enable interested parties to comment on the proposed transaction.⁴ On February 20, 2003, NETCO filed its Petition requesting that we deny the Applications, or, in the alternative, defer action on the Applications pending the outcome of a breach of contract suit currently pending in the Court of Common Pleas of Cuyahoga County, Ohio ("Ohio Court").⁵ NETCO alleges that Northcoast has materially breached its contractual obligations by failing to compensate NETCO for construction improvements to Northcoast's wireless communications facilities "in markets Northcoast owns or leases throughout Ohio and the Midwest United States."⁶ In response to NETCO's Petition, Northcoast filed an opposition to the Petition ("Opposition"),⁷ to which NETCO replied.*

111. DISCUSSION

A. NETCO's Petition

4. NETCO requests that the Applications be denied, or, in the alternative, deferred pending the outcome of a breach of contract action. The only issue raised by NETCO's Petition pertains to a private, contractual matter outside the Commission's competence and of a sort the Commission has historically and consistently left to local courts of appropriate jurisdiction to resolve.⁸ We therefore deny NETCO's

⁴ See Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless Seek FCC Consent for Assignment of Fifty Broadband Personal Communication Services Licenses, *Public Notice*, DA 03-172 (rel. Jan. 21, 2003).

⁵ See Petition at 1-2.

⁶ *Id.*

⁷ Applications of Northcoast Communications, LLC, and Its Subsidiaries, and Cellco Partnership d/b/a Verizon Wireless for Consent to Assignment of Fifty Broadband Personal Communications Service Licenses, Opposition of Northcoast Communications, LLC to Petition to Deny of National Engineering Technical Company (filed Feb. 27, 2003) ("Opposition").

⁸ Application of Consent for Assignment of Fifty Broadband Personal Communication Services Licenses Filed by Northcoast Communications, LLC and Cellco Partnership d/b/a Verizon Wireless, Reply Brief of National Engineering Technical Company to Northcoast Communications, LLC's Opposition to National Engineering Technical Company's Petition to Deny (filed Mar. 10, 2003).

⁹ See, e.g., *Listener's Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); Assignment of Call Sign WPFX961, From Elaine Hough, Assignor, to Chadmoore Wireless Group, Inc., Assignee, *Order*, DA 03-426, at ¶ 7 (CWD rel. Feb. 13, 2003) ("Hough"); Applications of Northwest Broadcasting, Inc., Memorandum Opinion and Order, 12 FCC Rcd. 3289, 3293, ¶ 10 (1997); Application of WorldCom, Inc. and MCI Communications Corporation, Memorandum Opinion and Order, 13 FCC Rcd. 18,025, 18,148, ¶ 214 (1998); Applications of PCS 2000, Memorandum Opinion and Order, 12 FCC Rcd. 1681, 1691, ¶ 23 (1997); Application of Los Angeles Cellular Telephone Company, 13 FCC Rcd. 4601, 4605, ¶ 7 (CWD 1998); Applications of Pueblo MSA Limited Partnership, Order, 13 FCC Rcd. 131, 133, ¶ 5 (CWD 1997) ("Pueblo MSA"); Application of RVC Services, Inc., 11 FCC Rcd. 12,136, 12,145, ¶ 20 (CWD 1996) (citing Application of MCI Communications Corporation, 10 FCC Rcd. 1072, 1074, ¶ 11 (CCB 1994)); Applications of Caribbean SMR, Inc., SMR Digital PR, Inc., Island Communications, Inc., Order, 16 FCC Rcd. 15,663, 15,664-65, ¶ 5 (CWD, PARB 2001) ("CaribbeanSMR"); AirTouch Paging, Inc., Order, DA 99-1175, at ¶ 5 (CWD, PARB rel. June 16, 1999); S.A. Dawson d/b/a Dawson Associates, Memorandum Opinion and Order, 17 FCC Rcd. 472, 474, ¶ 7 & n.15 (WTB 2002).

petition.” Consistent with previous decisions, however, we stress that our decision here does not foreclose any relief to which NETCO ultimately may be entitled based on the outcome of civil litigation.”

B. Section 310(d) Analysis

5. Pursuant to Section 310(d) of the Communications Act, the Commission must determine whether the proposed assignment will serve the public interest, convenience, and necessity.” In evaluating assignment and transfer applications under section 310(d) of the Communications Act, we generally do not re-evaluate the qualifications of the assignor unless issues related to its basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.¹³ Although NETCO has requested that we deny the Applications or defer action pending the outcome of the Ohio Court's proceeding, it has not challenged Northcoast's qualifications as a licensee and no finding has been made in the Ohio case that would cause us to question Northcoast's qualifications.

6. By contrast, as a regular **part** of our analysis, we determine whether the proposed assignee is qualified to hold a Commission license.¹⁴ We have determined in prior proceedings that Venzon Wireless is qualified to hold Commission licenses, and neither Venzon Wireless nor any third party has advised us of any changes in the company's qualifications. Therefore, we find no reason to conclude otherwise here.¹⁵

7. Northcoast acquired the fifty licenses being assigned to Venzon Wireless in this transaction through competitive bidding. Northcoast acquired forty-seven of the licenses in PCS Auction No. 11, and

¹⁰ Verizon Wireless claims in its Opposition that NETCO fails to establish that it has standing to file a petition to deny against these Applications. See Opposition at 2-3. Furthermore, Verizon Wireless alleges that NETCO failed to comply with the Commission's requirements regarding the service of petitions on the applicants. See *id.* at 4-5. We do not reach the merits of these procedural arguments in this Order, because we are denying NETCO's Petition on substantive grounds.

¹¹ Hough, DA 03-426, at ¶ 7; AirTouch Paging, Inc., **Order**, 14 FCC Rcd. 9658, 9660, ¶ 6 (CWD 1999); Pueblo MSA, 13 FCC Rcd. at 134, ¶ 6; Caribbean SMR, **16** FCC Rcd. at 15,665, ¶ 6.

¹² 47 U.S.C. § 310(d).

¹³ See Applications of VoiceStream Wireless Corporation, PowerTel, Inc. and Deutsche Telekom AG, **Memorandum Opinion and Order**, 16 FCC Rcd. 1779, 9790, ¶ 19 (2001) (“DT-VoiceStream”); see also Applications of Vodafone AirTouch, Plc, and Bell Atlantic Corporation, **Memorandum Opinion and Order**, 15 FCC Rcd. 16,507, 16,513, ¶ 14 (WTB and IB 2000) (“Vodafone AirTouch”); see also Applications of Pacific Wireless Technologies, Inc. and Nextel of California, Inc., **Memorandum Opinion and Order**, 16 FCC Rcd. 20341, 20,343, ¶ 7 (WTB 2001) (“Pacific Wireless”); Applications of Motorola, Inc., **Order**, 16 FCC Rcd. 8451, 8455, ¶ 7 & n.23 (WTB 2001) (“Motorola”) (and additional citations therein).

¹⁴ See DT-VoiceStream, 16 FCC Rcd. at 9798, ¶ 30; see also Pacific Wireless, 16 FCC Rcd. at 20,343, ¶ 8; see also Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc. and FCI 900, Inc., **Memorandum Opinion and Order**, 15 FCC Rcd. 790, 794, ¶ 10 (WTB 2000) (“Geotek”) (citing Applications of AirTouch Communications, Inc. and Vodafone Group, Plc, **Memorandum Opinion and Order**, 14 FCC Rcd. 9430, 9432-34, ¶¶ 5-9 (WTB 1999)); Motorola, 16 FCC Rcd. at 8455, ¶ 8.

¹⁵ See Vodafone AirTouch, 15 FCC Rcd. at 16,507; see, e.g., Pacific Wireless, 16 FCC Rcd. at 20,344, ¶ 8. The indirect, non-controlling interest of Vodafone, a United Kingdom company, in the partnership has been previously approved by the Commission under section 310(b)(4) of the Communications Act. See Vodafone AirTouch, 15 FCC Rcd. at 16,514, ¶ 19; International Authorizations Granted, **Public Notice**, Rpt. No. TEL-00174, 15 FCC Rcd. 116 (IB 1999); Applications of AirTouch Communications, Inc. and Vodafone Group, Plc., **Memorandum Opinion and Order**, 14 FCC Rcd. 9430, 9434 ¶ 9 (WTB 1999). The parties state that no changes have occurred in Verizon Wireless' foreign ownership since the Commission's these rulings. See Lead Application, Exhibit 1, at 2. Accordingly, we find that the applications raise no new foreign ownership issues.

forty-two of these are subject to the Commission's entrepreneurial eligibility restrictions.¹⁶ Northcoast is eligible to assign these licenses to Verizon Wireless before the expiration of the five-year holding period because the Applications were filed subsequent to Northcoast's notification to the Commission, pursuant to section 24.203(c) of the Commission's rules," that its five-year construction requirements for these licenses have been satisfied.¹⁸ Before this transaction may be consummated, however, the remaining balance plus interest on Northcoast's installment financing for these licenses must be paid."

8. Northcoast acquired the remaining three licenses in PCS Auction No. 35. These licenses are not subject to the transfer and assignment restrictions of closed-bidding licenses. Because Northcoast received bidding credits as a "very small business" for these licenses, however, the bidding credits must be repaid plus interest prior to consummation of this transaction.²⁰

9. With respect to competition and public interest benefits, the parties state that this transaction will allow Verizon Wireless to expand its licensed-area footprint into nine **BTAs** in which Verizon currently holds no spectrum, and allow customers in these markets "to have access for the first time to the wide array of state-of-the-art voice and data products and services that Verizon Wireless offers, thus giving consumers increased choice among wireless competitors and offerings."" In these nine markets, the transaction will bring a new facilities-based competitor into the market."

10. In the forty-one BTAs in which Verizon Wireless currently offers service, the spectrum acquired in this transaction will allow Verizon Wireless to expand its network capacity and services." The parties state that this transaction will eliminate spectrum constraints in many markets, allowing Verizon Wireless to provide new services and serve the growing demands of its existing subscribers, as well as accommodating new subscribers." This transaction will result in Verizon Wireless holding 35 MHz of spectrum or less in forty-four markets and between 45 and 55 MHz in the remaining **six** BTAs.²⁵

11. In forty of the forty-one BTAs in which Verizon Wireless currently provides service, Northcoast does not operate. Thus, there will be no loss of an *actual* competitor in these areas. The *potential* competition that Northcoast represented will be eliminated, but we have received no comments indicating that this constitutes a competitive harm, and we do not believe any adverse impact on mobile telephony rates or service will result.

12. In the remaining BTA, Canton, Ohio, Northcoast currently provides service in **Stark** County. In this one county, with a population of roughly 378,000, the transaction will involve the loss of an **actual** competitor. Northcoast currently has fewer than **4,000** subscribers in **Stark** County, which the Applicants represent constitutes less than two per cent of the market. These customers **are** not being transferred to Verizon Wireless as part of the transaction. After the assignment, there will still be six facilities-based

"See 47 C.F.R. § 24.839(a).

¹⁷ 47 C.F.R. § 24.203(c).

¹⁸ See 47 C.F.R. § 24.839(a)(6).

¹⁹ See 47 C.F.R. § 1.2111(c); Lead Application, Exhibit 1, at 4. No repayment of bidding credits is due on these licenses because the licenses were granted more than five years ago. See 47 C.F.R. § 1.2111(d).

²⁰ See 47 C.F.R. § 1.2111(d); Lead Application, Exhibit 1, at 4.

²¹ Lead Application, Exhibit 1, at 7.

²² See *id*

²³ See *id*.

²⁴ See *id*.

²⁵ See *id*

competitors operating in this county. All are regional or national operators with established systems and well-known brand names. With respect to spectrum, Venzon will control 35 megahertz, while the other competitors will control either 25 or 30 megahertz. In addition, we note that we have received no comments indicating that the loss of Northcoast service in this county constitutes a competitive harm. Thus, we do not believe that this transaction will result in harm to rates and/or service in Stark County.

13. We also note that, throughout the areas in which the licenses being acquired overlap with licenses currently owned by Venzon Wireless, the percentage of total spectrum it will control after the assignment will remain limited. In most cases Venzon Wireless will control less than twenty percent of the spectrum available to support mobile telephony. In no case will it control more than thirty percent. No comments have suggested, and we do not believe, that spectrum aggregation to these levels threatens competitive harm in the spectrum input market.

14. In conclusion, we find that Venzon Wireless is qualified to hold these licenses and that the transaction will not result in undue anticompetitive harm. We find that the proposed transaction integrating Northcoast's spectrum into Verizon Wireless's nationwide network is in the public interest, as Verizon Wireless will be able to expand into new markets, and provide new services to subscribers and increase subscribership in markets in which it currently provides service. We therefore grant the Applications.

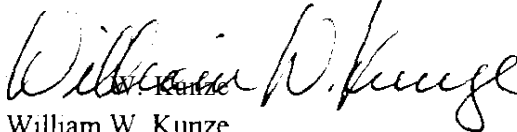
IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, and 310(d), and Section s 0.331 and 1.939 of the Commission's rules, 47 C.F.R. § 0.331, 1.939, that the Petition to Deny of National Engineering Technical Company IS DENIED.

16. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 309, 310(d), that the Applications filed by Northcoast Communications, LLC, to assign its licenses to Cellco Partnership d/b/a Venzon Wireless, ARE GRANTED, conditioned upon full payment of any required unjust enrichment payments on or before the consummation date, pursuant to section 1.2111 of the Commission's rules, 47 C.F.R. § 1.2111(c), (d).

17. IT IS FURTHER ORDERED that this proceeding (WT Docket No. 03-19) IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



William W. Kunze

Chief, Commercial Wireless Division
Wireless Telecommunications Bureau